

RESOLUTION NO.

Resolution of the Planning Commission of the City of San Jose granting, subject to conditions, a Conditional Use Permit to use certain real property described herein for the purpose of allowing a 10-bed residential care facility with 2 live-in staff.

FILE NO. CP01-11-097

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSE:

WHEREAS, pursuant to the provisions of Chapter 20.44 of Title 20 of the San Jose Municipal Code, on November 20, 2001, an application (File No. CP01-11-097) was filed for a Conditional Use Permit for the purpose of allowing a 10-bed residential care facility with two live-in staff, on that certain real property (hereinafter referred to as "subject property"), situate in the R-M Residence Zoning District, located on the east side of S. Third Street, approximately 50 feet north of E. Virginia Street, San Jose, and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.44 of Title 20 of the San Jose Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "LifeChoice Treatment Services," dated November 15, 2001. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE:

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Medium Density Residential (8-16 DU/AC) on the adopted San Jose 2020 General Plan Land Use/ Transportation Diagram.
2. The project site is located in the R-M Residence Zoning District.
3. The applicant is requesting this Conditional Use Permit to allow a residential care facility providing for up to 10 residents and two on-site staff in the R-M Residence Zoning District
4. The 0.11-acre site, developed with a 3-story, 2,450 square-foot building, is proposed to accommodate 10 residents and two on-site staff.
5. The site is surrounded by multi-family residential uses to the north, east, and south, and light industrial to the west.
6. Residential care/service facilities are a land use allowed in the Medium Density Residential (8-16DU/AC) land use designation. General Plan policy specifies that uses of this type should be located in residential designations that allow eight or more dwelling units per acre. The *Population-Dwelling Unit Equivalency* provision of the General Plan Discretionary Alternate Use Policies provides a density range for non-traditional housing that is based on population rather than the number of dwelling units. The population dwelling unit equivalency is calculated by multiplying the General Plan density range by the acreage and the average household size. Assuming average persons per household of 3.08 persons, this formula allows an on-site population of between 3 and 6 persons.
7. The applicant is proposing an 10-bed facility, which is in excess of the maximum population allowed on this site under the equivalency formula. However, the General Plan also deems existing developed parcels (those with an urban land use) of less than two acres in size to be in conformance regardless of their designation. Under this alternate provision, the 10-bed facility is deemed to conform to the General Plan.
8. General Plan Policy specifies that residential social service programs should not be concentrated in a few areas, but should be distributed throughout the City. The East Gardner neighborhood has a number of residential service facilities.
9. According to City records, the nearest legal, permitted residential care or service facility is located at least 300 feet away from the project. Therefore, approval of the proposed Conditional Use Permit would not result in an over-concentration within the project vicinity.
10. The Zoning Code requires that residential service facilities provide a minimum of one parking space for each four beds and one space for each staff person. Using this standard, the project as proposed requires 5 parking spaces. However, the Zoning Code also allows the Conditional Use Permit authorizing a facility to reduce the required amount of parking consistent with specific individual circumstances. This use provides a total of five parking spaces--two covered parking spaces, two driveway spaces in a tandem configuration and one on-street space.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project will be consistent with the adopted San Jose 2020 General Plan Land Use/ Transportation Diagram of the City of San Jose.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed use is compatible with the surrounding neighborhood.

Finally, based upon the above stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons residing or working in the surrounding area; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highway or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate and; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-15614) to the satisfaction of the Director of Public Works:
 - a. *Fees.* In accordance with City Ordinance, all storm sewer area fees, sanitary connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to recordation of the Conditional Use Permit.
 - b. *Street Improvements.* Remove and replace broken or uplifted sidewalk along project frontage prior to recordation of the Conditional Use Permit.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "LifeChoice Treatment Services" dated November 15, 2001 on file with the Department Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 24).
3. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Drug and Alcohol Referral Program.** The applicant/operator shall obtain certification from the County of Santa Clara for an Adult Residential Drug and Alcohol Facility.
5. **State License.** The facility shall maintain a license in good standing for a Sober Living Environment with the State of California.

6. **Records Maintenance.** Records of the facility shall be maintained and made available for City staff as needed.
7. **Residential Occupancy Permit.** The applicant shall obtain a Residential Occupancy Permit from the Code Enforcement Division. No Occupancy Permit shall be issued until all required improvements are complete and until the project has been certified in compliance with all applicable building and fire codes.
8. **Exit Lighting.** Emergency exit lighting shall be installed per the fire and building codes.
9. **Fire Safety Drills.** Fire safety drills shall be held every two months, in order to familiarize new residents with evacuation procedures.
10. **Occupancy.** This Conditional Use Permit authorizes the use of the main building for a residential care facility for 10 residents and 2 staff members. A total of 3 people are allowed to sleep on the first floor, and up to 9 people are allowed to sleep on the second floor. No use of the tower room or the basement for living purposes is allowed.
11. **Parking.** Prior to obtainment of a Residential Occupancy Permit, the applicant shall enlarge the detached accessory building to have minimum interior dimensions of 18' x 18' clear. The applicant shall submit a Permit Adjustment Application to the Director of Planning for approval of the accessory structure enlargement. This building is to be used for covered parking for two (2) vehicles. Use of the accessory building as living space is prohibited.
12. **Driveway Parking.** This Conditional Use Permit recognizes the use of the driveway to account for two of the required five parking spaces.
13. **Parking Signage.** Signage shall be posted at the driveway entrance that clearly designates on-site parking locations and discourages project residents, staff, and visitors from parking in, or in front of, neighboring driveways. Signage shall include a contact number, so that neighboring residents can contact the facility management with concerns.
14. **Resident Drivers.** No more than three (3) residents in the facility are allowed to drive, excluding staff.
15. **24-hour On-site Management.** 24-hour on-site staff management is required.
16. **Contact Person.** The applicant shall provide the Director of Planning in writing on an annual basis, the name of a designated contact/complaint person, an alternate and staff manager. The initial designated contact/complaint person shall be provided to the Director of Planning prior to recordation of the permit.
17. **Compliance Review.** A Compliance review is required in response to written complaints filed with the Director of Planning.
18. **Outdoor Activities.** Outdoor activities shall be limited to the hours of 8:00 a.m. to 8:00 p.m. Monday through Friday, and 10:00 a.m. to 8:00 p.m. Saturday, Sunday and holidays.

19. **Amplified Sound.** The permit does not permit nor include any approval for exterior/outdoor amplified sound.
20. **Loitering.** Loitering by non-residents on site is not permitted, nor is loitering by residents in the front setback. Parking areas shall be posted with “no loitering/trespassing” signs.
21. **Visiting Requirements.** Visitation hours shall be established and posted on-site and shall not extend beyond the hours of 7:00 a.m. to 10:00 p.m. Employee staff meetings, which include more than the normal staffing levels, shall not occur during established visiting hours. No persons other than residents or staff normally scheduled for the operations of the facility shall be allowed on-site between 10:00 p.m. and 7:00 a.m. except for emergencies. All such emergency situations shall be documented for review by City staff. Entry into the facility shall be controlled at all times.
22. **On-site Events.** On-site events shall be limited to resident functions only.
23. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping. Garbage and recycling containers must be stored in the designated area at the rear of the site except for 12 hours before and after scheduled pick-ups.
24. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
25. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP01-11-097, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
26. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
27. **Resident Violations.** Any resident found to violate sobriety from alcohol/controlled substances shall be subject to immediate eviction from the facility.
28. **Outdoor Storage.** No outdoor storage is permitted.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to

and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

ADOPTED and issued this 22nd day of May, 2002, by the following vote:

AYES: LEVY, JAMES, DHILLON, CHUN HOO, ZAMORA

NOES: NONE

ABSENT: GODBOLT

DISQUALIFIED: NONE

Chairperson

ATTEST:

Stephen M. Haase, Secretary

Deputy

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

c: Owner, Applicant, Building Division (2), Engineering Services
207-10/JED:jb